

ANDRE SMITH-LOVEJOY, ) 3:12-cv-00011-ECR-VPC  
)  
Plaintiff, ) Order  
)  
vs. )  
)  
PHYSICIANS MUTUAL INSURANCE; )  
SMITH'S FOOD & DRUG STORES; NIKE )  
SHOE COMPANY, )  
)  
Defendants. )  
)  
)

Plaintiff proceeds in this action pro se. Plaintiff seeks to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Plaintiff has submitted the required affidavit (#1) showing that he is unable to prepay fees and costs or give security for them. The request to proceed *in forma pauperis* will therefore be granted.

Section 1915 authorizes the Court to dismiss a case if it is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from an immune defendant. 28 U.S.C. § 1915(e)(2). A claim is legally frivolous if it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d

1 1221, 1227-28 (9th Cir. 1984). The Court may therefore dismiss a  
2 claim as frivolous if it is based on a legal theory indisputably  
3 without merit or where the factual contentions are clearly baseless.  
4 Neitzke, 490 U.S. at 327.

5 The Court has reviewed the complaint (#1-1) pursuant to 28  
6 U.S.C. § 1915 and finds that it is subject to dismissal as  
7 frivolous. Plaintiff brings a section 1983 civil rights suit  
8 against Defendants for failing to provide him with social security  
9 payments in accord with a 100 million dollar insurance policy and  
10 for the use of his artwork. Plaintiff seeks his "fair share of the  
11 partnership." The one-paragraph complaint (#1-1) contains no  
12 further allegations. Moreover, Plaintiff provides that this suit  
13 has already been dismissed by the Eastern District of California,  
14 and he seeks to re-litigate the same case here in the District of  
15 Nevada. For the foregoing reasons, the Court finds that the claims  
16 lack an arguable basis in either law or in fact. Accordingly, the  
17 complaint (#1) should be dismissed as frivolous.

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### **III. Leave to Amend**

20 Pursuant to Federal Rule of Civil Procedure 15(a), leave to  
21 amend is to be "freely given when justice so requires." In general,  
22 amendment should be allowed with "extreme liberality." Owens v.  
23 Kaiser Found. Health Plan, Inc., 244 F.3d 708 712 (9th Cir. 2001)  
24 (quoting Morongo Band of Missions Indians v. Rose, 893 F.2d 1074,  
25 1079 (9th Cir. 1990)). However, if factors such as undue delay, bad  
26 faith, dilatory motive, undue prejudice, or futility of amendment

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1 are present, leave to amend may properly be denied in the district  
2 court's discretion. Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d  
3 1048, 1051-52 (9th Cir. 2003). The Court finds that leave to amend  
4 should be denied as futile because Plaintiff's claims are baseless.

5  
6 **IV. Conclusion**

7 Plaintiff's claim must be dismissed because it is legally  
8 frivolous, having no basis in either law or fact.

9  
10 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiff's request to  
11 proceed *in forma pauperis* (#1) is **GRANTED**.

12  
13 **IT IS FURTHER ORDERED** that Plaintiff's complaint (#1-1) is  
14 **DISMISSED** without leave to amend.

15  
16 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Trial de Nova  
17 for Revocation of Gaming License (#6), Motion to Shorten Time (#7),  
18 and Motion for Emergency Relief (#10) are **DENIED** as moot because  
19 Plaintiff's case has been dismissed.

20  
21 The Clerk shall enter judgment accordingly.

22  
23 DATED: February 16, 2012.

24   
25 UNITED STATES DISTRICT JUDGE